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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Cherhis  
Proc I*

**FILE:** B-188266

**DATE:** April 7, 1977

**MATTER OF:** Growing Green, Inc.

**DIGEST:**

Protest filed in late January, when protester knew basis for protest in late December, is untimely and not for consideration on merits under Bid Protest Procedures, since it was filed more than 10 working days after basis for protest was known.

Growing Green, Inc. (GGI), protested the award of a contract (purchase order No. FX 6520-6-0675) to the Missouri Botanical Garden (Missouri) by the Department of the Interior, National Park Service (NPS), to provide interior landscaping for the Gateway Arch lobby.

The protester alleges that it learned of the NPS plan to have a horticultural display installed and maintained in the Gateway Arch lobby in mid-December 1976 and that on December 27, 1976, its representative met with NPS personnel and was advised that a contract was to be awarded on a noncompetitive basis to Missouri, a non-profit organization which operates a competing plant installation and maintenance business. Actually, the purchase order had been issued to Missouri on September 22, 1976. NPS allegedly informed GGI that it was not necessary to formally advertise the procurement because Missouri was a non-profit organization.

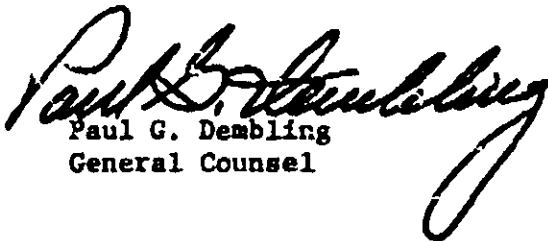
By letter dated January 25, 1977, received in our Office on January 28, 1977, GGI protested the sole-source award alleging that the non-profit status of Missouri did not justify the noncompetitive award.

Section 20.2(b)(2) of the Bid Protest Procedures, 4 C.F.R. part 20 (1976), provides for protests being filed--

"\* \* \* not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

B-188266

By GGI's own admission, it learned of the procurement in mid-December 1976 and knew the basis for protest on December 27, 1976, when it met with NPS. Since the protest was filed here on January 28, 1977, more than 10 working days elapsed after the basis for protest was known. Therefore, the protest is untimely and will not be considered on the merits.

  
Paul G. Dembling  
General Counsel